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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 HUMBERTO HERNANDEZ,
14 Plaintiff,

15 v.

16 SYNCHRONY BANK; AND
17 DISCOUNT TIRE CO. INC.
18 Defendant(s).

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. TCPA, 47 U.S.C. § 227; and
2. RDDCPA, CAL. CIV. CODE §
1788 *et seq.*

(Unlawful Debt Collection Practices)

19 **COMPLAINT AND DEMAND FOR JURY TRIAL**

20 Plaintiff, Humberto Hernandez (“Plaintiff”), through his attorneys, alleges the
21 following against Defendants, Synchrony Bank (hereinafter “Synchrony”) and Discount
22 Tire Co., Inc. also known as America’s Tire (hereinafter “Discount Tire” or “AT” or
23 collectively referred to as “Defendant” or “Defendants”):

24 **INTRODUCTION**

- 25 1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer Protection
Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute that broadly

1 regulates the use of automated telephone equipment. Among other things, the
2 TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic
3 dialers or prerecorded messages, and delegates rulemaking authority to the Federal
4 Communications Commission (“FCC”).

- 5 2. Count II of Plaintiff’s Complaint is based upon Rosenthal Fair Debt Collection
6 Practices Act (“RFDCPA”), CAL. CIV. CODE § 1788, which prohibits debt
7 collectors from engaging in abusive, deceptive, and unfair practices in connection
8 with the collection of consumer debts.
9

10 **JURISDICTION AND VENUE**

- 11 3. Jurisdiction of this court arises under 47 U.S.C. § 227 et seq. and 28 U.S.C. § 1331.
12 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the
13 events or omissions giving rise to the claim occurred in this District.
14 5. Defendants transact business here and therefore personal jurisdiction is established.
15

16 **PARTIES**

- 17 6. Plaintiff is a natural person residing in the state of California.
18 7. Plaintiff is a debtor as defined by CAL. CIV. CODE § 1788.2(h).
19 8. Defendant Synchrony Bank is a financial institution with its principal place of
20 business located in Draper, Utah. Defendant can be served with process through its
21 designated agent, CT Corporation System, at 818 West 7th Street, Suite 930, Los
22 Angeles, CA. 90017.
23 9. Defendant Synchrony is a debt collector as that term is defined by Cal. Civ. Code
24 §1788.2(c).
25

1 10. Defendant Discount Tire, is an Arizona corporation which can be served through
2 its designated agent, CT Corporation System, at 818 West 7th Street, Suite 930, Los
3 Angeles, CA. 90017.

4 11. Defendants acted through its agents, employees, officers, members, directors,
5 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives,
6 and insurers.

7
8 **FACTUAL ALLEGATIONS**

9 12. Defendant Discount Tire, by means of Defendant Synchrony Bank, is attempting
10 to collect a debt from Plaintiff.

11 13. In or around January 2017, Defendant Synchrony Bank began placing calls to
12 Plaintiff on his cellular phone number (818) 470-8108 in an attempt to collect on
13 the alleged debt.

14 14. The calls placed by Defendant Synchrony Bank originated from (877) 317-5659.

15 15. Upon information and belief, Defendant owns and operates the phone number.

16 16. On or about January 16, 2017, at 10:26 a.m., Plaintiff received a call on his cellular
17 telephone from (877) 317-5659.

18 17. Plaintiff heard a pause before the collection agent began to speak, indicating the
19 use of an automated telephone dialing system; Plaintiff spoke with Stewart, a
20 representative of Defendant Synchrony.

21 18. Defendant Synchrony informed Plaintiff that it was attempting to collect a debt
22 relating to his "America's Tire" Synchrony account, at which point Plaintiff
23 unequivocally revoked consent to be called any further on his cellular telephone.
24
25

1 19. Despite Plaintiff's request not to be contacted, Defendant Synchrony Bank
2 continued to call Plaintiff.

3 20. On or about February 24, 2017, at 3:23 p.m., Plaintiff received a call on his cellular
4 telephone from (877) 317-5659 and spoke with Kelly, a representative from
5 Defendant Synchrony; at which point Plaintiff unequivocally revoked consent to
6 be contacted for a second time.

7 21. Despite revoking consent, Defendant Synchrony called Plaintiff approximately
8 one-hundred and forty (140) times between January 16, 2017 and February 24,
9 2017.

10 22. Then, on or about March 8, 2017, at 8:02 a.m., Plaintiff received a call on his
11 cellular telephone from (877) 317-5659 and spoke with Diane, a representative
12 from Defendant Synchrony; at which point Plaintiff unequivocally revoked consent
13 to be contacted for a third time.

14 23. Between January 16, 2017 and March 8, 2017, Defendant Synchrony willfully
15 called Plaintiff on his cellular phone approximately one hundred and sixty-nine
16 times (169) to annoy and harass Plaintiff in the hopes that they could induce
17 Plaintiff to pay the debt.

18 24. On many days, Defendant would call Plaintiff up to five times a day.

19 25. For example, on February 19, 2017, Defendant called Plaintiff at 8:23 a.m., 9:56
20 a.m., 11:32 a.m., 1:31 p.m., and 1:51 p.m.

21 26. Defendant would even call shortly after Plaintiff had just revoked consent to be
22 contacted.

1 27. For example, on March 8, 2017, Defendant called Plaintiff an hour and twenty-five
2 minutes after he had previously spoken with Diane and revoked consent to be
3 contacted.

4 28. Plaintiff works at a pool supply warehouse as a supervisor and the calls from
5 Defendant have interrupted his job at times making him fear that he could lose his
6 job due to the excessive calls.

7 29. The calls not only induced stress, but also anxiety from having to pick up his
8 cellular phone while working.

9 30. Due to Defendant's actions, Plaintiff has suffered emotional distress and sustained
10 actual damages.
11

12 **COUNT I- FIRST CLAIM FOR RELIEF**
13 **Defendants Violated the TCPA, 47 U.S.C. § 227)**

14 31. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as
15 though fully stated herein.

16 32. Defendants violated the TCPA. Defendants' violations include, but are not limited
17 to the following:
18

- 19 a. Within four years prior to the filing of this action, on multiple occasions,
20 Defendants violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in
21 pertinent part, "It shall be unlawful for any person within the United States
22 . . . to make any call (other than a call made for emergency purposes or made
23 with the prior express consent of the called party) using any automatic
24 telephone dialing system or an artificial or prerecorded voice — to any
25

1 telephone number assigned to a . . . cellular telephone service . . . or any
2 service for which the called party is charged for the call.

3 b. Within four years prior to the filing of this action, on multiple occasions,
4 Defendants willfully and/or knowingly contacted Plaintiff at Plaintiff's
5 cellular telephone using an artificial prerecorded voice or an automatic
6 telephone dialing system and as such, Defendants knowing and/or willfully
7 violated the TCPA.
8

9 33. As a result of Defendants' violations of 47 U.S.C. § 227, Plaintiff is entitled to an
10 award of five hundred dollars (\$500.00) in statutory damages, for each and every
11 violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendants
12 knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of
13 one thousand five hundred dollars (\$1,500.00), for each and every violation
14 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
15

16 **COUNT II-SECOND CLAIM FOR RELIEF**
17 **Defendants Violated the Rosenthal Fair Debt Collection**
18 **Practices Act, CAL. CIV. CODE § 1788)**

19 34. Plaintiff incorporates herein by reference all of the above paragraphs of this
20 complaint as though fully set forth herein at length.

21 35. Defendants violated the RFDCPA. Defendants' violations include, but are not
22 limited to, the following:

23 a. Defendants violated CAL. CIV. CODE § 1788.11(d) by causing a telephone
24 to ring repeatedly or continuously to annoy the person called;
25

1 b. Defendants violated CAL. CIV. CODE § 1788.11(e) by communicating, by
2 telephone or in person, with the debtor with such frequency as to be
3 unreasonable and to constitute a harassment to the debtor under the
4 circumstances; and

5 c. Defendants violated CAL. CIV. CODE § 1788.17 by collecting or attempting
6 to collect a consumer debt without complying with the provisions of
7 Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code
8 (Fair Debt Collection Practices Act).
9

10 i. Defendants violated CAL. CIV. CODE § 1788.17 by violating 15
11 U.S.C. § 1692d by engaging in conduct, the natural consequence of
12 which is to harass, oppress or abuse any person in connection with
13 the collection of the alleged debt; and
14

15 ii. Defendants violated CAL. CIV. CODE § 1788.17 by violating 15
16 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging
17 Plaintiff in telephone conversations repeatedly; and

18 iii. Defendants violated CAL. CIV. CODE § 1788.17 by violating 15
19 U.S.C. § 1692f by using unfair or unconscionable means in
20 connection with the collection of an alleged debt.
21

22 36. Defendants' acts, as described above, were done intentionally with the purpose of
23 coercing Plaintiff to pay the alleged debt.
24
25

1 37. As a result of the foregoing violations of the RFDCPA, Defendants are liable to
2 Plaintiff for declaratory judgment that Defendants' conduct violated the RFDCPA,
3 actual damages, statutory damages, and attorneys' fees and costs.

4 **PRAYER OF RELIEF**

5 **WHEREFORE**, Plaintiff, Humberto Hernandez, respectfully requests judgment be
6 entered against Defendants, Synchrony Bank and Discount Tire, for the following:

- 7
- 8 A. Statutory damages of \$500.00 for each and every negligent violation of the
9 TCPA pursuant to 47 U.S.C. § (b)(3)(B);
- 10 B. Statutory damages of \$1500.00 for each and every knowing and/or willful
11 violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. §
12 (b)(3)(C);
- 13 C. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection
14 Practices Act, CAL. CIV. CODE §1788.30(b);
- 15 D. Actual damages pursuant to CAL. CIV. CODE § 1788.30(a);
- 16 E. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt
17 Collection Practices Act, CAL. CIV. CODE § 1788.30(c); and
- 18 F. Any other relief that this Honorable Court deems appropriate.
- 19
20

21 RESPECTFULLY SUBMITTED,

22 Dated: April 28, 2017.

23 By: /s/ Stuart Price
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